

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

RONICA M. BROWN,

Plaintiff,

v.

CAROLYN W. COLVIN, Acting
Commissioner of the Social Security
Administration,

Defendant.

CASE NO. 3:16-cv-05291 JRC

ORDER ON PLAINTIFF'S
COMPLAINT

This Court has jurisdiction pursuant to 28 U.S.C. § 636(c), Fed. R. Civ. P. 73 and Local Magistrate Judge Rule MJR 13 (*see also* Notice of Initial Assignment to a U.S. Magistrate Judge and Consent Form, Dkt. 3; Consent to Proceed Before a United States Magistrate Judge, Dkt. 4). This matter has been fully briefed (*see* Dkt. 9, 10, 11).

After considering and reviewing the record, the Court concludes that the ALJ's finding that the opinion of examining doctor, Dr. Gene McConnachie, Ph.D., is highly influenced by plaintiff's subjective statements is a finding based on substantial evidence

1 in the record as a whole. For example, although Dr. McConnachie opined that plaintiff's
2 reliance on taking medications including benzodiazepines will interfere with plaintiff's
3 ability to focus and persist, Dr. McConnachie relies on plaintiff's report that she was
4 seeking benzodiazepines on the black market to manage her anxiety symptoms (*see* AR.
5 305, 309). In addition, although Dr. McConnachie opines that plaintiff's major difficulty
6 with vocational success will be her issues with anger and unstable interpersonal
7 relationships, Dr. McConnachie relied on plaintiff's self-report regarding her alleged
8 anger as she did not demonstrate anger during his examination, but instead, "was alert
9 and bright and responded appropriately and cheerfully throughout the interview," and
10 demonstrated a cooperative attitude and general behavior (*see* AR. 306, 309). Dr.
11 McConnachie also appears to have relied on plaintiff's self reports regarding anxiety
12 symptoms of panic attacks as he indicated that there was "no evidence of agitation in her
13 presentation" (AR. 306). Plaintiff has not challenged the ALJ's failure to credit fully
14 plaintiff's subjective statements and allegations (*see* Dkt. 9).

16 Therefore, the ALJ's finding that Dr. McConnachie's opinion was highly
17 influenced by plaintiff's subjective statements is supported by substantial evidence in the
18 record as a whole. Since the ALJ's failure to credit fully plaintiff's subjective statements
19 is not being challenged, the ALJ's findings are conclusive. It is not the job of the court to
20 reweigh the evidence: If the evidence "is susceptible to more than one rational
21 interpretation," including one that supports the decision of the Commissioner, the
22 Commissioner's conclusion "must be upheld." *Thomas v. Barnhart*, 278 F.3d 947, 954
23 (9th Cir. 2002) (citing *Morgan, supra*, 169 F.3d at 599, 601).

1 For the reasons stated, the ALJ's decision is affirmed.

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3 BACKGROUND

4 Plaintiff, RONICA M. BROWN, was born in 1964 and was 48 years old on the
5 alleged date of disability onset of January 13, 2012 (*see* AR. 188-94). Plaintiff completed
6 high school and one year of college (AR. 37-38). Plaintiff has work experience as a
7 housekeeper, as an office worker, and in a deli and bakery (AR. 201-12). Plaintiff left her
8 last job at a bakery/deli clerk when her panic and anxiety became worse and she allegedly
9 was not able to leave her house (AR. 40).

10 According to the ALJ, plaintiff has at least the severe impairments of "panic
11 disorder, post-traumatic stress disorder (PTSD), polysubstance abuse (sedative, hypnotic,
12 and anxiolytic), borderline personality disorder, and obesity (20 CFR 416.920(c))" (AR.
13 15).

14 At the time of the hearing, plaintiff was living in a house with six other people
15 (AR. 37).

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17 PROCEDURAL HISTORY

18 Plaintiff's application for Supplemental Security Income ("SSI") benefits pursuant
19 to 42 U.S.C. § 1382(a) (Title XVI) of the Social Security Act was denied initially and
20 following reconsideration (*see* AR. 80-91, 93-105). Plaintiff's requested hearing was held
21 before Administrative Law Judge Gene Duncan ("the ALJ") on September 8, 2014 (*see*
22 AR. 34-78). On October 15, 2014, the ALJ issued a written decision in which the ALJ
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1 concluded that plaintiff was not disabled pursuant to the Social Security Act (*see* AR. 10-
2 33).

3 In plaintiff's Opening Brief, plaintiff raises the following issues: (1) Whether or
4 not the ALJ erred in rejecting the medical opinions of Gene McConnachie Ph.D.; and (2)
5 Whether or not the ALJ's errors were harmless (*see* Dkt. 9, p. 1).

6 STANDARD OF REVIEW

7 Pursuant to 42 U.S.C. § 405(g), this Court may set aside the Commissioner's
8 denial of social security benefits if the ALJ's findings are based on legal error or not
9 supported by substantial evidence in the record as a whole. *Bayliss v. Barnhart*, 427 F.3d
10 1211, 1214 n.1 (9th Cir. 2005) (*citing Tidwell v. Apfel*, 161 F.3d 599, 601 (9th Cir.
11 1999)).

12 DISCUSSION

13 (1) **Whether or not the ALJ erred in rejecting the medical opinions of** 14 **examining doctor, Dr. Gene McConnachie Ph.D.**

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16 When an opinion from an examining doctor is contradicted by other medical
17 opinions, the examining doctor's opinion can be rejected only "for specific and legitimate
18 reasons that are supported by substantial evidence in the record." *Lester v. Chater*, 81
19 F.3d 821, 830-31 (9th Cir. 1996) (*citing Andrews v. Shalala*, 53 F.3d 1035, 1043 (9th Cir.
20 1995); *Murray v. Heckler*, 722 F.2d 499, 502 (9th Cir. 1983)); *see also* 20 C.F.R. §§
21 404.1527(a)(2) ("Medical opinions are statements from physicians and psychologists or
22 other acceptable medical sources that reflect judgments about the nature and severity of
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1 your impairment(s), including your symptoms, diagnosis and prognosis, what you can
2 still do despite impairment(s), and your physical or mental restrictions”).

3 According to the Ninth Circuit, “[an] ALJ may reject [even] a treating physician’s
4 opinion if it is based ‘to a large extent’ on a claimant self-reports that have been properly
5 discounted as incredible.” *Tommasetti v. Astrue*, 533 F.3d 1035, 1041 (9th Cir. 2008)
6 (quoting *Morgan v. Comm’r. Soc. Sec. Admin.*, 169 F.3d 595, 602 (9th Cir. 1999) (citing
7 *Fair v. Bowen*, 885 F.2d 597, 605 (9th Cir. 1989))). Such situation is distinguishable from
8 one in which the doctor provides his own observations in support of his assessments and
9 opinions. *See Ryan v. Comm’r of Soc. Sec. Admin.*, 528 F.3d 1194, 1199-1200 (9th Cir.
10 2008) (“an ALJ does not provide clear and convincing reasons for rejecting an examining
11 physician’s opinion by questioning the credibility of the patient’s complaints where the
12 doctor does not discredit those complaints and supports his ultimate opinion with his own
13 observations”).

15 It is not the job of the court to reweigh the evidence: If the evidence “is susceptible
16 to more than one rational interpretation,” including one that supports the decision of the
17 Commissioner, the Commissioner’s conclusion “must be upheld.” *Thomas v. Barnhart*,
18 278 F.3d 947, 954 (9th Cir. 2002) (citing *Morgan, supra*, 169 F.3d at 599, 601).

19 Dr. Gene McConnachie, Ph.D., examined plaintiff on July 13, 2013 (*see* AR. 304-
20 09). He reviewed plaintiff’s subjective complaints and also reviewed some medical
21 records (*see* AR. 304-05). For example, he noted plaintiff’s report that “she’s had anxiety
22 and panic attacks since age 12, developing intense fears around at age 19 or 20” (AR.
23 305). Dr. McConnachie noted that plaintiff “reports seeking Xanax, Ativan, or other
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1 benzodiazepines on the black market to manage her anxiety symptoms” (*id.*). Dr.
2 McConnachie discussed plaintiff’s medication list, but did not suggest that plaintiff was
3 being prescribed Xanax, Ativan or any benzodiazepine, but noted that she was using
4 these substances “to self medicate her anxiety symptoms” (AR. 306).

5 Dr. McConnachie performed a mental status examination (“MSE”) (AR. 306-08).
6 Regarding her general appearance, Dr. McConnachie indicated that there was “no
7 evidence of any agitation in her presentation, nor motor retardation” (AR. 306). He
8 indicated that plaintiff “was alert and bright and responded appropriately and cheerfully
9 throughout the interview” (*id.*). Dr. McConnachie indicated that plaintiff’s “attitude and
10 general behavior was cooperative, appearing to want to please and may be tending to be
11 exaggerating some of her symptoms, although it’s not clear that she was malingering”
12 (*id.*). He opined that plaintiff is “very personable and appears to have somewhat above
13 average intelligence,” noting that plaintiff “was able to sustain socially appropriate
14 behavior for the course of the hour” (*id.*).

16 Regarding her mood and affect, plaintiff reported that she felt “sad because she
17 had to discuss all of these things” (AR. 307). Although plaintiff “was at times teary and
18 other times cheerful with quick changes of affect,” Dr. McConnachie noted that
19 plaintiff’s “affect did not appear congruent with her verbal report, with a tendency for her
20 to be dramatic, tearing up briefly when discussing her problems, then quickly coming
21 around to a cheery mood when the subject was changed” (*id.*). Dr. McConnachie
22 indicated that there “was no evidence of any delusional or psychotic behavior today (*id.*).
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1 Dr. McConnachie noted that plaintiff's "speech was normal in rate, tone and
2 volume and appropriately variable to the conversation" (*id.*). He opined that plaintiff
3 "seems like an intelligent women with good verbal skills" (*id.*).

4 Dr. McConnachie indicated that plaintiff's memory "is not strong," but noted that
5 she was able to recall three out of three objects immediately, one out of three objects after
6 a delay of five minutes, and an additional object after the delay when prompted with the
7 category (*id.*). He opined that her memory difficulty "does not appear to be impaired by
8 general intellectual problems, but potentially anxiety issues or the three Xanax tablets she
9 claims to have taken before the interview" (*id.*). Dr. McConnachie opined that plaintiff's
10 ability to spell the word "world" in the forward and backward direction demonstrated
11 "that she does have adequate concentration," but opined that "potentially her
12 concentration would be impaired by taking three Xanax tabs this morning" (*id.*).

14 Dr. McConnachie noted that plaintiff "attributes her personal and social problems
15 as due to panic attacks or agoraphobia," although he opined that they were more likely
16 due to her personality characteristics (AR. 307-08). Dr. McConnachie noted plaintiff's
17 report that she could concentrate well enough to read a novel (AR. 308).

18 Dr. McConnachie opined that plaintiff's "ability to reason and make basic
19 judgment is intact as is short-term and long-term memory for simple instructions" (AR.
20 309). He indicated that although plaintiff "reports a significant difficulty [] with
21 concentration and focus related to her fear of panic and her symptoms of depression," he
22 noted that there "were no significant signs of problem with concentration and focus in
23 today's interview" (*id.*). The Court notes that in this instance and a number of others
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1 already noted, Dr. McConnachie himself discredited some of plaintiff's complaints. *See*
2 *Ryan*, 528 F.3d at 1199-1200 ("an ALJ does not provide clear and convincing reasons for
3 rejecting an examining physician's opinion by questioning the credibility of the patient's
4 complaints where the doctor does not discredit those complaints and supports his ultimate
5 opinion with his own observations").

6 Dr. McConnachie noted that plaintiff reported a fear of panic attacks and a
7 reliance on "taking medications including benzodiazepines," to deal with these, and he
8 opined that "these will interfere with her ability to focus on more complex tasks and her
9 ability to persist to job completion" (AR. 309). Dr. McConnachie opined that plaintiff
10 "will need to resolve these drug abuse issues and learn to cope with anxiety symptoms
11 before she could be successful in a job" (*id.*).

12 However, Dr. McConnachie noted that plaintiff "has shown the ability to adapt to
13 a very serious adjustment problem of being homeless and breaking up with her boyfriend
14 who was supporting her and having to support herself" (*id.*). He further noted that
15 plaintiff "was able to survive in the homeless shelter and work cooperatively with the
16 housing program to regain stable housing" (*id.*).

17 Dr. McConnachie opined that plaintiff's "major difficulty with vocational success
18 will be her issues with anger and unstable interpersonal relationships, affecting her ability
19 to work well with others" (*id.*). He also opined that plaintiff "will need help through
20 proper medication and competent mental health therapy to manage anxiety symptoms of
21 panic attacks so that she can focus on job duty" (*id.*).

1 The ALJ discussed the opinion of Dr. McConnachie relatively thoroughly (*see*
2 AR. 24-25). However, the ALJ failed to credit fully his opinion (AR. 25). In doing so, the
3 ALJ noted that although Dr. McConnachie opined that plaintiff “needed to resolve her
4 drug abuse issues and learn to cope with anxiety symptoms before she would be
5 successful in a job, [on] the other hand, he reported that she had shown the ability to
6 adapt to being homeless and breaking up with her boyfriend, who was supporting her,
7 and having to support herself” (AR. 24). The ALJ also noted plaintiff’s ability to survive
8 in the homeless shelter and work cooperatively with the housing program to regain stable
9 housing, which the ALJ found “contradicts her claims of high anxiety” (*id.*). The ALJ
10 indicated that the opinion of Dr. McConnachie “is given only some weight because it
11 seems highly influenced by the claimant’s subjective statements, which are not credible
12 for many reasons” (AR. 25). The Court notes that plaintiff has not challenged the ALJ’s
13 failure to credit fully plaintiff’s subjective statements and allegations (*see* Dkt. 9).

15 The ALJ noted that “Dr. McConnachie noted numerous inconsistencies in the
16 claimant’s reports,” and noted that Dr. McConnachie “thought she was exaggerating her
17 symptoms, and he noted that she appeared to be abusing prescription drugs, which he
18 suspected could be causing some of her problems although there were no significant
19 signs of problems with concentration or focus during the examination” (*id.* (citing AR.
20 309)). The ALJ also found that plaintiff’s “allegations of symptoms and limitations were
21 not consistent with her concurrent report of daily activities or performance on the mental
22 status examination” (*id.*). The ALJ indicated that while Dr. McConnachie “opined that
23 she would not currently be successful in a job based on drug abuse and anxiety issues, the
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1 fact that she can acquire drugs on the street discredits her claims of debilitating panic
2 attacks and agoraphobia, as does her ability to grocery shop” (*id.*).

3 After considering and reviewing the record, the Court concludes that the ALJ’s
4 finding that the opinion of Dr. McConnachie is highly influenced by plaintiff’s subjective
5 statements is based on substantial evidence in the record as a whole.

6 First, the Court notes that the “substantial evidence” standard is not very difficult
7 for an ALJ to meet. “Substantial evidence” is more than a scintilla, less than a
8 preponderance, and is such ““relevant evidence as a reasonable mind might accept as
9 adequate to support a conclusion.”” *Magallanes v. Bowen*, 881 F.2d 747, 750 (9th Cir.
10 1989) (quoting *Davis v. Heckler*, 868 F.2d 323, 325-26 (9th Cir. 1989)). Regarding the
11 question of whether or not substantial evidence supports the findings by the ALJ, the
12 Court should “review the administrative record as a whole, weighing both the evidence
13 that supports and that which detracts from the ALJ’s conclusion.”” *Andrews v. Shalala*,
14 53 F.3d 1035, 1039 (9th Cir. 1995) (citing *Magallanes, supra*, 881 F.2d at 750).

15 The ALJ meets that standard in his written decision in multiple ways. For
16 example, although Dr. McConnachie opined that plaintiff’s reliance on taking
17 medications including benzodiazepines will interfere with plaintiff’s ability to focus and
18 persist, Dr. McConnachie relies on plaintiff’s report that she was seeking
19 benzodiazepines on the black market to manage her anxiety symptoms (*see* AR. 305,
20 309). Similarly, although Dr. McConnachie opines that plaintiff’s major difficulty with
21 vocational success will be her issues with anger and unstable interpersonal relationships,
22 Dr. McConnachie relied on plaintiff’s self-report regarding both of these issues, at least
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1 in part, as she did not demonstrate anger during his examination, but instead, “was alert
2 and bright and responded appropriately and cheerfully throughout the interview,” and
3 demonstrated a cooperative attitude and general behavior (*see* AR. 306, 309). Similarly,
4 contrary to his opinion that one of plaintiff’s issues regarding vocational success is
5 unstable interpersonal relationships, during his examination, he noted that she “was able
6 to sustain socially appropriate behavior for the course of the hour” (AR. 306).

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8 Finally, although Dr. McConnachie indicated that plaintiff’s anxiety symptoms of
9 panic attacks would hamper plaintiff’s ability to work, he did not appear to observe any
10 anxiety symptoms or a panic attack during his examination, as he indicated that there was
11 “no evidence of agitation in her presentation, nor motor retardation” (AR. 306). Although
12 plaintiff “was at times teary and other times cheerful with quick changes of affect,” Dr.
13 McConnachie noted that plaintiff’s “affect did not appear congruent with her verbal
14 report with a tendency for her to be dramatic, tearing up briefly when discussing her
15 problems, then quickly coming around to a cheery mood when the subject was changed”
16 (AR. 307).

17 Although Dr. McConnachie’s opinion has some minimal objective support, the
18 ALJ’s finding that it was highly influenced by plaintiff’s subjective statements is
19 supported by substantial evidence in the record as a whole. It is not the job of the court to
20 reweigh the evidence: If the evidence “is susceptible to more than one rational
21 interpretation,” including one that supports the decision of the Commissioner, the
22 Commissioner’s conclusion “must be upheld.” *Thomas*, 278 F.3d at 954 (citing *Morgan*,
23 *supra*, 169 F.3d at 599, 601).
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CONCLUSION

JUDGMENT should be for defendant and the case should be closed.

J. R. Matthews

ORDER ON PLAINTIFF'S COMPLAINT - 12